

268 NLRB No. 179

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Livonia, MI

UNITED STATES OF AMERICA
BEFORE THE NATIONAL LABOR RELATIONS BOARD

RAYCON INDUSTRIES, INC.

and

LOCAL 934, INTERNATIONAL UNION
OF ELECTRICAL, RADIO AND MACHINE
WORKERS, AFL--CIO--CLC

Cases 1--CA--22058(1),
7--CA--22058(2),
7--CA--22058(3)

DECISION AND ORDER

Upon a charge filed by the Union on 29 April 1983, the General Counsel of the National Labor Relations Board issued a complaint on 27 May 1983 against the Company, the Respondent, alleging that it has violated Section 8(a)(5) and (1) of the National Labor Relations Act. Although properly served copies of the charge and complaint, the Company has failed to file an answer.

On 23 August 1983 the General Counsel filed a Motion for Default Judgment. On 26 August 1983 the Board issued an order transferring the proceeding to the Board and a Notice to Show Cause why the motion should not be granted. The Company filed no response. The allegations in the motion are therefore undisputed.

The National Labor Relations Board has delegated its authority in this proceeding to a three-member panel.

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Ruling on Motion for Default Judgment

Section 102.20 of the Board's Rules and Regulations provides that the allegations in the complaint shall be deemed admitted if an answer is not filed within 10 days from service of the complaint, unless good cause is shown. The complaint states that, unless an answer is filed within 10 days of service, "all the allegations in the complaint shall be deemed to be admitted to be true and shall be so found by the Board." Further, the undisputed allegations in the Motion for Default Judgment disclose that the General Counsel, by letter dated 29 June 1983, notified the Company that, unless an answer was received immediately, a Motion for Default Judgment would be filed.

In the absence of good cause shown for the failure to file a timely answer, we grant the General Counsel's Motion for Default Judgment.¹

On the entire record, the Board makes the following:

Findings of Fact

I. Jurisdiction

The Company, a Michigan corporation, is engaged in the manufacture of sheet metal enclosures, panel boards, switchboards, and related products at its facility in Livonia, Michigan, where it annually purchases and receives goods and products valued in excess of \$50,000 directly from suppliers outside the State of Michigan. We find that the Company is an employer engaged in commerce within the meaning of Section 2(6) and (7) of the Act and that the Union is a labor organization within the meaning of Section 2(5) of the Act.

¹ In granting the General Counsel's Motion for Default Judgment, Chairman Dotson specifically relies on the total failure of the Respondent to contest either the factual allegations or the legal conclusions of the General Counsel's complaint. Thus, the Chairman regards this proceeding as being without precedential value.

II. Alleged Unfair Labor Practices

A. The Unit

The following employees of Respondent constitute a unit appropriate for collective-bargaining purposes within the meaning of Section 9(b) of the Act:

All production and maintenance employees, including truck drivers and shipping and receiving employees employed by Respondent at its facility located at 11665 Levan, Livonia, Michigan, but excluding guards and supervisors as defined in the Act.

B. Respondent's Refusal To Bargain

Since approximately 1970, and at all times material, the Union has been the designated exclusive bargaining representative of the Respondent's employees in the unit described above and has been so recognized by the Respondent. Such recognition has been embodied in a series of collective-bargaining agreements between the Respondent and the Union, the most recent of which expired on 1 May 1983.

Since on or about 29 October 1982 the Respondent has unilaterally changed existing terms and conditions of employment of its employees in the above-described unit by failing and refusing to grant cost-of-living increases to its employees as required by the collective-bargaining agreement referred to above. Since in or about November 1982 the Respondent has also unilaterally changed terms and conditions under said agreement by failing and refusing to remit to the Union dues withheld from the pay of its employees. Additionally, since on or about 15 January 1983 the Respondent has unilaterally changed terms and conditions under said agreement by failing and refusing to furnish its employees health care insurance.

We find that, by the above-stated conduct, the Respondent has engaged in and is engaging in unfair labor practices within the meaning of Section 8(a)(5) and (1) of the Act.

Conclusions of Law

1. Raycon Industries, Inc., is an employer engaged in commerce within the meaning of Section 2(6) and (7) of the Act.

2. Local 934, International Union of Electrical, Radio and Machine Workers, AFL--CIO--CLC, is a labor organization within the meaning of Section 2(5) of the Act.

3. All production and maintenance employees, including truck drivers and shipping and receiving employees employed by the Respondent at its facility located at 11665 Levan, Livonia, Michigan, but excluding guards and supervisors as defined in the Act, constitute a unit appropriate for the purposes of collective bargaining within the meaning of Section 9(b) of the Act.

4. At all times material herein, the Union has been the exclusive collective-bargaining representative of all the employees in the aforesaid appropriate unit for the purposes of collective bargaining within the meaning of Section 9(a) of the Act.

5. The Respondent has committed unfair labor practices within the meaning of Section 8(a)(5) and (1) by failing to abide by the collective-bargaining agreement described above, by failing and refusing to provide its employees cost-of-living increases and health care insurance, and by failing and refusing to remit to the Union dues withheld from the pay of its employees, all without prior notice to or bargaining with the Union.

6. The aforesaid unfair labor practices are unfair labor practices affecting commerce within the meaning of Section 2(6) and (7) of the Act.

Remedy

Having found that the Respondent has engaged in certain unfair labor practices, we shall order it to cease and desist and to take certain affirmative action designed to effectuate the policies of the Act.

Having found that the Respondent violated Section 8(a)(5) and (1) of the Act by failing to abide by the terms and conditions of employment set forth in the collective-bargaining agreement described above, without prior notice to or bargaining with the Union, we shall order the Respondent to give effect to and comply with the terms and conditions of employment set forth in said agreement. Further, we shall order that the Respondent, on request, bargain collectively with the Union as the exclusive representative of all employees in the appropriate unit with respect to wages, hours, and other terms and conditions of employment. Having found specifically that the Respondent has failed to honor the provisions of the collective-bargaining agreement concerning wages, we shall order the Respondent to make whole employees in the appropriate unit for any loss of wages they may have suffered as a result of the Respondent's unlawful conduct, retroactive to 29 October 1982, with interest as provided for in Florida Steel Corp., 231 NLRB 651 (1977).²

Further, we shall order the Respondent to provide health care insurance as specified in the above-noted collective-bargaining agreement retroactive to 15 January 1983. Any interest applicable to such payments shall be paid in accordance with the criteria set forth in Merryweather Optical Co., 240 NLRB 1213 (1979). In addition, we shall order the Respondent to make whole its employees by reimbursing them for any medical or other expenses ensuing from the Respondent's unlawful failure to provide health care insurance, retroactive to 15 January 1983. See Kraft Plumbing & Heating, 252 NLRB 891 fn. 2 (1980). Further, we shall order Respondent to make whole the Union by

transmitting to it the full amount of union dues which the Respondent was required to withhold pursuant to the union-security and checkoff provisions of the collective-bargaining agreement from November 1982 until 1 May 1983, with interest calculated in the manner prescribed in Florida Steel Corp., above.

ORDER

The National Labor Relations Board orders that the Respondent, Raycon Industries, Inc., Livonia, Michigan, its officers, agents, successors, and assigns, shall

1. Cease and desist from

(a) Refusing to bargain collectively with the Union by failing to abide by the most recent collective-bargaining agreement with respect to the payment of cost-of-living increases, remittance of union dues, and provision of health care insurance, without prior notice to the Union and without affording the Union an opportunity to negotiate and bargain with respect to such acts and conduct as the exclusive representative of its employees in the following appropriate unit:

All production and maintenance employees, including truck drivers and shipping and receiving employees employed by Respondent at its facility located at 11665 Levan, Livonia, Michigan, but excluding guards and supervisors as defined in the Act.

(b) In any like or related manner interfering with, restraining, or coercing employees in the exercise of the rights guaranteed them by Section 7 of the Act.

2. Take the following affirmative action which the Board finds will effectuate the policies of the Act.

² See, generally, Isis Plumbing Co., 138 NLRB 716 (1962), and F. W. Woolworth Co., 90 NLRB 289 (1950).

(a) On request, bargain with the above-named labor organization as the exclusive representative of all employees in the aforesaid appropriate unit with respect to rates of pay, wages, hours, and other terms and conditions of employment.

(b) Honor the terms and conditions of employment set forth in the collective-bargaining agreement with the above-named labor organization.

(c) Make whole all employees in the above-described appropriate unit in the manner set forth in the section of this Decision entitled "'Remedy'" by reimbursing them, with interest, for any loss of wages they may have suffered as a result of the Respondent's failure, since on or about 29 October 1982, to abide by the terms of the collective-bargaining agreement regarding cost-of-living increases.

(d) Make whole all employees by reimbursing them, with interest, for any medical or other expenses ensuing from the Respondent's failure to provide medical care insurance as required by the terms of the above-noted collective-bargaining agreement, retroactive to 15 January 1983.

(e) Make whole the Union in the manner set forth in the section of this Decision entitled "'Remedy'" for any losses it may have suffered as a result of the Respondent's failure to honor its contractual obligation to remit union dues.

(f) Preserve and, on request, make available to the Board or its agents, for examination and copying, all payroll records, social security payment records, timecards, personnel records and reports, and all other records necessary or useful in checking compliance with this Order.

(g) Post at its facility in Livonia, Michigan, copies of the attached notice marked "'Appendix.'"³ Copies of said notice, on forms provided by the Regional Director for Region 7, after being signed by the Respondent's representative, shall be posted by the Respondent immediately upon receipt and maintained for 60 consecutive days in conspicuous places including all places where notices to employees are customarily posted. Reasonable steps shall be taken by the Respondent to ensure that said notices are not altered, defaced, or covered by any other material.

(h) Notify the Regional Director for Region 7, in writing, within 20 days from the date of this Order, what steps Respondent has taken to comply herewith.

Dated, Washington, D.C.

27 February 1984

Donald L. Dotson, Chairman

Don A. Zimmerman, Member

Patricia Diaz Dennis, Member

(SEAL)

NATIONAL LABOR RELATIONS BOARD

³ In the event that this Order is enforced by a Judgment of a United States Court of Appeals, the words in the notice reading "'POSTED BY ORDER OF THE NATIONAL LABOR RELATIONS BOARD'" shall read "'POSTED PURSUANT TO A JUDGMENT OF THE UNITED STATES COURT OF APPEALS ENFORCING AN ORDER OF THE NATIONAL LABOR RELATIONS BOARD.'"

APPENDIX

NOTICE TO EMPLOYEES

Posted by Order of the
National Labor Relations Board
An Agency of the United States Government

WE WILL NOT fail to abide by the terms and conditions of employment set forth in the collective-bargaining agreement with Local 934, International Union of Electrical, Radio and Machine Workers, AFL--CIO--CLC, with respect to our employees in the following appropriate unit:

All production and maintenance employees, including truck drivers and shipping and receiving employees employed by us at our facility located at 11665 Levan, Livonia, Michigan, but excluding guards and supervisors as defined in the National Labor Relations Act.

WE WILL NOT in any like or related manner interfere with, restrain, or coerce you in the exercise of the rights guaranteed you by Section 7 of the Act.

WE WILL, on request, bargain with the above-named Union, as the exclusive representative of all the employees in the bargaining unit described above with respect to rates of pay, wages, hours, and other terms and conditions of employment.

WE WILL honor and give retroactive effect to the terms and conditions of employment set forth in the collective-bargaining agreement with the above-named labor organization.

WE WILL make whole all employees in the above-described appropriate unit by reimbursing them, with interest, for any loss of wages they may have suffered as a result of our failure to abide by the terms of the collective-bargaining agreement regarding cost-of-living increases.

WE WILL make whole all employees by reimbursing them, with interest, for any medical or other expenses ensuing from our failure to provide medical care insurance as required by the collective-bargaining agreement.

WE WILL make whole the Union for any losses it may have suffered as a result of our failure to honor our contractual obligations to remit union dues.

RAYCON INDUSTRIES, INC.

(Employer)

Dated ----- By -----
(Representative) (Title)

This is an official notice and must not be defaced by anyone.

This notice must remain posted for 60 consecutive days from the date of posting and must not be altered, defaced, or covered by any other material. Any questions concerning this notice or compliance with its provisions may be directed to the Board's Office, Patrick V. McNamara Federal Building, Room 300, 477 Michigan Avenue, Detroit, Michigan 48226, Telephone 313--226--3244.